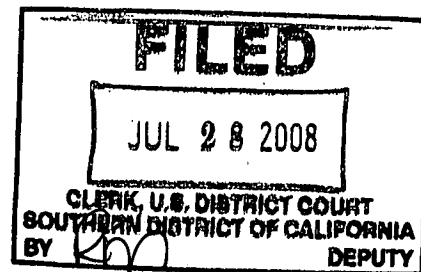


1 MR. MATTHEW L. JOHNSON  
2 C.D.C. NO. D-33369  
3 DW-315UP - C.T.F. Central  
4 P.O. Box 689  
5 Soledad, Calif. 93960  
6  
7



8 IN THE UNITED STATES DISTRICT COURT FOR  
9 THE SOUTHERN DISTRICT OF CALIFORNIA

10 MATTHEW L. JOHNSON  
11 Plaintiff,

12 V.

13 CAPT. R. DARR  
14 Defendant,  
15

CASE NO. 08-CV-0080-DMS-(POR)

NOTICE OF OPPOSITION TO  
DEFENDANT'S MOTION TO  
DISMISS PLAINTIFF'S  
COMPLAINT.

Hearing:

August 28, 2008

Time:

2:00 PM.

Courtroom:

H

Judge:

The Honorable  
LOUISA S. PORTER

16  
17  
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19  
20 PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES  
21 IN SUPPORT OF PLAINTIFF'S OPPOSITION ARE ATTACHED.  
22  
23  
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26  
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28

CR

1.

1 MEMORANDUM OF POINTS AND AUTHORITIES:  
2

3 ON July 21, 2008, Plaintiff received Defendant's  
4 Motion to Dismiss his Complaint for the follow-  
5 ing Reasons stated below.

6  
7 1. THIS COURT SHOULD DISMISS PLAINTIFF'S  
8 COMPLAINT BECAUSE THE ISSUE OF WHETHER HE  
9 EXHAUSTED ADMINISTRATIVE REMEDIES IS  
SUBJECT TO COLLATERAL ESTOPPEL.

10  
11 II. THIS COURT SHOULD DISMISS PLAINTIFF'S  
12 COMPLAINT BECAUSE HE FAILED TO EXHAUST HIS  
13 ADMINISTRATIVE REMEDIES AFTER THIS COURT  
DISMISSED THE FIRST ACTION.

14  
15 III. THIS COURT SHOULD DISMISS PLAINTIFF'S COMPLAINT  
16 AS FRIVOLOUS BECAUSE IT LACKS AN ARGUABLE  
17 BASIS IN LAW.  
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INTRODUCTION:

Plaintiff Matthew L. Johnson is a California Prison Inmate currently incarcerated at the Correctional Training Facility (CTF) in Soledad, California.

Plaintiff is filing this complaint from an incident that took place while he was housed at Centinela State Prison in Imperial, California. Plaintiff was intentionally placed at risk of an attack from other inmates by Captain DARR, after a racial riot had just taken place between black and Hispanic inmates just four days earlier.

Plaintiff filed a complaint against this Correctional Officer timely and fully exhausted all administrative remedies before filing his last complaint to this court, but because Plaintiff is a layman at law, and did the best he could at filing such complaint, Plaintiff's complaint was dismissed based upon the way Plaintiff addressed that complaint, the court also wrote in its ruling that the complaint is dismissed without prejudice.

Plaintiff raised several constitutional violations, such as his Fourth, Fifth, Eighth, Ninth, and Fourteenth Amendments, and yet, Plaintiff claim fail under the Eighth Amendment.

1 Defendant Claim Plaintiff did not exhaust his  
2 administrative remedies based upon he never  
3 recieved a Responce from the Director of  
4 Corrections, the third level of Appeal, and subm-  
5 itted a Declaration from that branch in Sacra-  
6 mento, California, dated July 17, 2008, from  
7 Assistant Chief, Inmate Appeals Branch,  
8 T. EMIGH, stating they have no record of Plain-  
9 tiff's complaint.

10 Plaintiff totolly contend all allegations made  
11 by Defendant, and swears to this Court, It's all  
12 a cover up to deprive Plaintiff of his grounds  
13 for relief.

14 Plaintiff did in fact exhaust all his Remedies,  
15 but dose not have his original Complaint Form  
16 based upon it was submitted in his last  
17 Complaint to this Court, Case number 06-CV-  
18 1257-JAH(POR).

19 Plaintiff submitted his complaint to the Appeal's  
20 Branch Chief Assistant after it was Denied at  
21 the second level at Centinela State Prison,  
22 but the complaint was returned to Plaintiff  
23 two diffrent times, claiming Plaintiff needed  
24 to go back to the second level for review,  
25 upond the third try to submitte his Complaint  
26 to the third level, Plaintiff never recieved  
27 another responce from them, and after a  
28 six (6) month period had passed, with

1 still no response from the third level, Denicing  
2 Plaintiff his right to a speedy trial, Plaintiff  
3 then submitted his complaint to this Court,  
4 the complaint was Dismissed without  
5 Prejudice.

6 Plaintiff is humbly Requesting this Honorable  
7 Court to order all Plaintiff legal mail out-  
8 going since he been housed here at C.T.F.  
9 to prove he submitted his complaint to the  
10 third level for review, and to order an  
11 ORAL ARGUMENT IN OPEN COURT OF ALL THESE  
12 ALLEGATIONS OF THE DEFENDANT, as Plaintiff  
13 Fully denies them.

14 Plaintiff also humbly request from this Court  
15 the opportunity to prove his right, Eighth  
16 Amendment were infact violated by this  
17 officer by placing his life in danger, the  
18 defendant has sited all kind of case law  
19 and provisions against Plaintiff in this  
20 action, to again, deprive him of his Constit-  
21 utional Right, and Justice, and TELLING  
22 this Court what it can and can't do, BUT,  
23 that's why we have Courts today, to render  
24 Justice, and to protect human rights, it is  
25 clear Plaintiff was a victim of a Battery,  
26 it is clear Plaintiff was escorted by  
27 Captain DARR when this incident occurred,  
28 the only way to get to the bottom of what

1 happen to Plaintiff and why it happened, is to  
 2 simply deny Defendant's motion to Dismiss  
 3 and order a hearing to prevent officer DARR  
 4 from continuing his misconduct and violat-  
 5 ing other Inmates rights.

6 under Federal Rule of Civil Procedure 12(b)(6)  
 7 tests the legal sufficiency of the claims  
 8 in the Complaint, Defendant doesn't even  
 9 speak on the incident that happened to  
 10 Plaintiff, instead, the Prosecution/Lawyer  
 11 for Defendant is attempting to continue to  
 12 prosecute Plaintiff for being a Layman at Law,  
 13 please see attach exhibit (a) of Doctor Hewchuk.  
 14 Also, as address in this Court's Ruling on page 7,  
 15 Case NO. 06-CV-1257-JAH(POR), it clearly states,  
 16 "However, unlike under Rule 12(b)(6), "(i)n deciding a  
 17 motion to dismiss for failing to exhaust non-  
 18 judicial remedies, the Court may look beyond the  
 19 pleadings and decide disputed issues of FACT."  
 20 Id at 1120 (citing Ritza, 837 F.2d at 369).

21 see Patsy v. Bd. of Regents of Florida, 457 U.S. 496,  
 22 516 (1982), also the "merits test," whereby the  
 23 Prisoner's grievance is fully addressed on the  
 24 merits by the administrative agency process, NONE  
 25 of which addressed Plaintiff's complaint, none did  
 26 the Defendant speak about such merits.

27 The Defendant also have the sole burden of proving  
 28 nonexhaustion, however, they failed to submitte



1 Plaintiff's (602) form, see Wyatt, 315 F.3d at 1119,  
2 they clearly have records of the Complaint as  
3 stated in there response on page 9-10, also in  
4 the response from Defendant on page 9-10, on  
5 page 10 the Defendant agrees with the Plaintiff  
6 that infact he did submitte his Appeal to the  
7 Third level for review, but the Appeal Complaint  
8 was returned by that final Branch, see page 10,  
9 Lines 6-11. of Defendant's Request for Judi-  
10 cial Notice, attached as exhibit (b).

11 Here the fact that Plaintiff's Complaint was  
12 infact Denied at the second lever for review  
13 on January 10, 2006, and was told by the second  
14 level, "that he could appeal this decision to the  
15 Director's Level of Review", see page 10, Lines  
16 3-4, of Defendant's Request for Judicial  
17 Notice, why would the third Level, the Appeal's  
18 Branch, that's ran by T. EMIGH, return Plaintiff's  
19 Complaint and documents, claiming his  
20 Appeal at the second level wasent completed,  
21 The Second Level clearly DENIED Plaintiff's  
22 Complaint, how much more completion was needed  
23 for the third level to review Plaintiff's  
24 Complaint?, again, this motion made by the  
25 Defendant is clearly a cover up, and need  
26 to be dismissed.

FINAL CONCLUSION:

Defendant's motion to Dismiss Plaintiff's Claim should be Dismissed, and a Hearing should be ordered to render justice in this action, Defendant constantly contradict himself in his motion, as attached exhibit (b), Plaintiff should be allowed to pursue his claim to also ensure the Constitutional Amendments were and will be enforced in the United States.

Respectfully Submitted,

Plaintiff,

Matthew L. Johnson

MATTHEW L. JOHNSON

Dated, 7-24-08



: EXHIBITS :

exhibit

(2)

NAME AND CDC NUMBER JOHNSON D-33369 CTF D-315U


CDC-128-B

## LAUDATORY CHRONO

Inmate JOHNSON D-33369 is a three strike Lifer. He has been incarcerated for over 12 years. Inmate JOHNSON was assigned to the Writer's caseload on 01/26/06. Since that date, he has been seen on a regular basis for mandated Mental Health follow ups as well as individual therapy.

During our clinical contact time, Inmate JOHNSON has focused primarily on the case appeal which he has filed in the Federal Courts as well as his family, to whom he is totally devoted. He appears to be highly motivated for individual improvement, and is programming well within an institutional framework. He appears to have arrived at an understanding and sense of individual responsibility for the antisocial behavior in his past, and is resolved to become a productive member of society upon release.

Orig: C-File  
Cc: Inmate  
Medical File  
MH File  
CCI



E. W. HEWCHUK, Ph.D.  
Staff Psychologist  
CTF - Soledad

Date: November 7, 2007

JOHNSON D-33369

MEDICAL-PSYCHIATRIC-DENTAL

1 "compliance test" whereby the prisoner must comply with all "critical procedural rules," including  
2 agency deadlines. If a plaintiff prisoner meets either test, a court will find proper exhaustion. If a  
3 defendant can show that the plaintiff failed to meet both the merits and compliance tests, a motion to  
4 dismiss for failure to exhaust administrative remedies will be granted).

5 The State of California provides its inmates and parolees the right to appeal administratively  
6 "any departmental decision, action, condition or policy perceived by those individuals as adversely  
7 affecting their welfare." See CAL.CODE REGS. tit. 15, § 3084.1(a). It also provides its inmates the  
8 right to file administrative appeals alleging misconduct by correctional officers. See id. § 3084.1(e).  
9 In order to exhaust available administrative remedies within this system, a prisoner must proceed  
10 through several levels of appeal: (1) informal resolution, (2) formal written appeal on a CDC 602  
11 inmate appeal form, (3) second level appeal to the institution head or designee, and (4) third level  
12 appeal to the Director of the California Department of Corrections. See id. § 3084.5; Brown, 422  
13 F.3d at 929-30; see also Barry v. Ratelle, 985 F. Supp. 1235, 1237 (S.D. Cal. 1997). A decision  
14 from the Director's Level of review is "not appealable and concludes the inmate's or parolee's  
15 departmental administrative remedy," Brown, 422 F.3d at 930 n.2, and, thus, has been found  
16 sufficient to satisfy § 1997e(a). See Barry, 985 F. Supp. at 1237-38.

17 In the instant case, Defendant has shown that Plaintiff did not properly exhaust his  
18 administrative remedies. See Wyatt, 315 F.3d at 1119 (defendants have the burden of proving non-  
19 exhaustion). Specifically, Defendant shows Plaintiff failed to complete the Third Level of Review  
20 before bringing this suit.<sup>6</sup> See Brown, 422 F.3d at 936-37; Woodford, \_\_U.S.\_\_, 126 S.Ct. at 2388  
21 (prisoner properly exhausts his administrative remedies when he complies with the state's critical  
22 procedure rules governing its grievance or appeals procedure).

23 On August 12, 2005, Plaintiff filed his CDC 602 inmate appeal form for review at the First  
24 \_\_\_\_\_  
25 \_\_\_\_\_  
26 \_\_\_\_\_

27 <sup>6</sup> There is no indication in the pleadings whether Plaintiff sought informal resolution prior to  
28 filing an appeal at the First Level of Review. However, Defendant does not address this stage of the  
appeal process and argues only that Plaintiff has not exhausted his administrative remedies due to his  
failure to complete the Third Level of Review.

1 Level of Review. (Complaint at Exhibit N-3<sup>7</sup>; Def.'s Mtn. at Exhibit 1.) Plaintiff's appeal was  
2 denied on September 28, 2005. (Complaint at Exhibit N-5; Def.'s Mtn. at Exhibit 2.) On January  
3 10, 2006, Plaintiff's appeal was denied at the Second Level of Review and was informed that he  
4 could appeal this decision to the Director's Level of Review, the Third Level of Review.  
5 (Complaint at Exhibit N-6, N-7; Def.'s Mtn. at Exhibit 4.)

6 The Inmate Appeals Branch, which conducts the final review of an appeal, constitutes the  
7 Director's Level or Third Level of Review and is the final step of an inmate's administrative remedy  
8 process. (Granis Decl. ¶ 4.) In a letter dated May 19, 2006, the Inmate Appeals Branch informed  
9 Plaintiff that his appeal documents were being returned to him because the appeal form he submitted  
10 did not indicate his appeal had been completed through the Second Level of Review. (Complaint at  
11 Exhibit I; Granis Decl. ¶ 8.) *How could they not receive anything from Plaintiff and yet, returned all his documents back to him?*

12 Although the May 19, 2006 letter instructed Plaintiff to contact the Appeals Coordinator if he  
13 disagreed with the Inmate Appeals Branch's decision and further directed him to contact his  
14 assigned counselor, the Appeals Coordinator, or his Parol Agent to help answer any questions he  
15 may have about the appeals process, neither Plaintiff nor Defendant allege facts or present evidence  
16 demonstrating Plaintiff had taken any of these steps. (Id.)

17 The evidence offered by Defendant supports a finding that Plaintiff did not correct the  
18 deficiency and re-submit the appeal for consideration at the Third Level of Review. (Granis Decl.  
19 ¶¶ 9-10.) A review of the records by the Inmate Appeals Branch shows "[n]o third level appeals  
20 have been accepted for review...from Plaintiff Matthew Johnson, CDCR #D-33369,...against  
21 Defendant Lieutenant Darr, pertaining to conspiracy and assault in July 2005." (Granis Decl. ¶ 10.)  
22 Additionally, the Appeals Office did not receive "any correspondence or telephone calls from  
23 Inmate Matthew Johnson, CDC #D-33369, pertaining to appeal log no. CEN-D-05-01339 [appeal  
24 relating to July 21, 2005 incident filed by Plaintiff against Defendant] seeking instructions on how to  
25 proceed after his appeal was rejected at the Third Level." (DeGeus Decl. ¶ 7.) Therefore, the Court  
26 finds that Defendant has carried his burden of proving non-exhaustion. See Wyatt, 315 F.3d at 1119

27  
28 <sup>7</sup> Plaintiff labeled seven pages in the Exhibit portion of his complaint with "N." For clarity and convenience, the Court has designated the first page marked with "N" as "N-1" and continued this form of identification for the following pages labeled "N" with the next consecutive number.



NAME: MATTHEW L. JOHNSON

CDC NO.: D-33369

CELL NO.: DW-315<sup>UP</sup> - P.O. Box 689

Soledad, Calif. 93960

Plaintiff In Pro Se

IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF CALIFORNIA  
(Insert Court Name And District)

In the matter of )

MATTHEW L. JOHNSON )

Plaintiff, )

vs. )

CAPT. DARR )

Defendants. )

CASE NO.: 08-CV-0080-DMS(POR)

EX PARTE MOTION FOR ASSIGNMENT  
OF COUNSEL, AND SUPPORTING  
MEMORANDUM OF POINTS AND  
AUTHORITIES AND DECLARATION.

TO: THE ABOVE-ENTITLED COURT;

I

INTRODUCTION

1. COMES NOW, MATTHEW L. JOHNSON, plaintiff in the  
above-entitled matter, pursuant to 28 USC § 1915(d), and moves  
the Court for assignment of counsel to assist plaintiff in  
further litigation of this action.

2. This Motion is based upon the forthcoming facts,  
memorandum of points and authorities, the attached declaration  
of plaintiff, as well as all other papers currently on file in  
this matter..



II

STATEMENT OF FACTS

3. Plaintiff is currently incarcerated at the California  
Correctional Facility in Soledad, C.T.F.

4. Plaintiff currently lacks any meaningful source of income to utilize in employing services of Counsel to provide experienced legal advice and skills to further the litigation of this case.

5. Plaintiff only has limited access to a law library and other materials necessary to facilitate proper legal research; the time permitted to study available legal materials is extremely limited during access periods.

6. Plaintiff is a layman at the law with little experience in the complex and confusing methods of legal research, reasoning, and writing. Plaintiff has virtually no knowledge of proper Federal Procedural Rules, Rules of Court, or Rules of Civil Procedure which are a fundamental necessity and of critical importance to proceed with important discovery and in obtaining certain types of evidence plaintiff believes defendants currently possess or have access to.

7. Plaintiff does not know what papers should now be filed or submitted to the court or defendants, to further the litigation of this case. Plaintiff has attempted to read and understand the Federal Rules of Civil Procedure, but plaintiff has been left predominantly confused regarding appropriate action at this point.

8. Plaintiff sincerely desires to pursue the above-entitled action and seek the relief requested in the original complaint

1 previously filed in this matter.

2 9. Plaintiff has limited formal education and no education  
3 in the law. Plaintiff does not understand or comprehend complex  
4 legal reasoning, standards, or language when attempting to study  
5 case precedent, codes, statutes, and other legal publications.  
6 Plaintiff was required to enlist assistance of fellow prisoners  
7 with limited knowledge of the law, in order to prepare and file  
8 the pleadings previously filed with the court; including this  
9 current Motion For Assignment Of Counsel. The assistance of  
10 fellow prisoners is nearly non-existent due the confinement  
11 conditions of my current housing unit; in fact, it is primarily  
12 due to pre-printed forms available in the law library plaintiff  
13 was able to submit the instant Motion and other papers on file  
14 in this action.

15 III

16 REASONS THE COURT SHOULD ASSIGN COUNSEL

17 10. Plaintiff is unable to employ counsel; (see Forma  
18 Pauperis application on file in the above-entitled action.)

19 11. The issues involved in this matter are complex and it  
20 is difficult for plaintiff to understand how to further proceed  
21 to press plaintiff's claims to a final resolution.

22 12. The issues involved necessitate serious and complex  
23 discovery proceedings to be undertaken by plaintiff in order to  
24 prepare for further proceedings on summary judgment or  
25 preparation for trial.

26 13. The prison limits plaintiff's access and time with law  
27 books and other legal materials necessary to facilitate proper  
28 legal research and drafting of papers.

1 14. Plaintiff has very little legal experience and  
2 knowledge of law.

3 15. The interests of justice and the economy of judicial  
4 resources would be best served by assignment of counsel to  
5 assist plaintiff in this action.

6 DATED: 7-24-08

Matthew L. Johnson  
(Signature)

MATTHEW L. JOHNSON  
(Print Name)

7  
8  
9 Plaintiff In Pro-Se

10  
11 ///

12 ///

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 ARGUMENT

3 Plaintiff points out there is clear statutory authority  
4 under which the District Court may appoint or assign counsel to  
5 assist pro se plaintiff in litigating this civil action.; (28  
6 USC § 1915(d); (in relationship to 42 USC § 1983); also see  
7 Norris v. Wainwright, (1977) 588 F.2d 130, 133-134;  
8 ("fundamental fairness" is the test by which the decision to  
9 appoint assistance of counsel rests.)

10 Another primary consideration is the right of every  
11 litigant, rich or poor, to equal consideration before the  
12 courts; (Coppedge v. United States, (1962) 369 U.S. 438, 456.)  
13 Even without statutory authority federal courts, in a proper  
14 situation or prevailing circumstances of a case, may assign  
15 counsel to assist an indigent state prisoner plaintiff under the  
16 court's supervisory powers and sound discretion; (McNabb  
17 v. United States, (1943) 318 U.S. 332, 346-347; also see The  
18 Supervisory Power of the Federal Courts, 76 Harv. L. 1656.)

19 Some courts hold counsel is not necessary "unless the  
20 circumstances of the particular case are such that counsel would  
21 be vital to attain due process, or access to the courts."  
22 (Eskridge v. Rhay, (1965) 345 F.2d 778, 782; Anderson v. Heinze,  
23 (1958) 258 F.2d 479, 482, 484; Dillon v. United States, (1962)  
24 307 F.2d 445, 447; Bounds v. Smith, (1977) 430 U.S. 817,  
25 823-832.)

26 Plaintiff is well aware the United States Supreme Court and  
27 Congress have never held a civil litigant has a right to have  
28 counsel assigned for assistance in pursuing claims in the

1 courts. However, the question of whether or not to assign  
2 counsel is solely within the discretion of the court and that  
3 sound discretion "requires that counsel be appointed at least in  
4 some cases." (United States v. Wilkens, (1964) 338 F.2d 404,  
5 406; United States v. Wilkens, (1960) 281 F.2d 707, 715.)

6 Many entanglements and unnecessary delays and expense to  
7 the judiciary and parties may be avoided by assignment of  
8 counsel; (Taylor v. Pegelow, 335 F.2d 147, 150.) At least one  
9 District Court has viewed in the context of habeas corpus that,  
10 unless the application could be dismissed "summarily," counsel  
11 should be assigned to assist the impoverished "layman prisoner";  
12 (Cullins v. Crouse, (1965) 348 F.2d 887, 889.)

13 In civil rights actions under 42 USC § 1983, to redress  
14 injuries inflicted by individuals "acting under color of state  
15 law", courts have considered assignment of counsel to be of  
16 fundamental importance where the plaintiff (prisoner civil  
17 litigant) must conduct discovery to pursue the case and the  
18 plaintiff cannot conduct the discovery himself; (Murrell  
19 v. Bennett, (1980) 615 F.2d 306, 309.) Perhaps more  
20 importantly, "summary judgment" proceedings against a prisoner  
21 plaintiff, unable to secure discovery to ward off such judgment,  
22 cannot be permitted against a layman prisoner plaintiff unaware  
23 of proper opposition to such proceedings; (Ibid, at 310-311.)

24 In this case, as stated in the foregoing facts and  
25 forthcoming attached declaration, plaintiff has clearly  
26 demonstrated he cannot proceed further in litigating this  
27 meritorious proceeding without assistance from someone  
28 knowledgeable in the intricacies entailed in pursuit of this

1 type of proceeding.

2 CONCLUSION

3 WHEREFORE, the foregoing reasons and any others deemed  
4 appropriate by the court, plaintiff prays the court assign  
5 counsel to in further pursuit of this action.

6 DATED: 7-24-08.

Respectfully submitted,

7 Matthew L. Johnson  
8 (Signature)

9 MATTHEW L. JOHNSON  
10 (Print Name)

11 Plaintiff In Pro-Se  
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DECLARATION SUPPORTING MOTION FOR COUNSEL

1. MATTHEW L. JOHNSON, declare the following:

1. I am the plaintiff in the above-entitled action.

2. I am currently a state prison inmate with no meaningful source of income to utilize in employing assistance of counsel.

3. My personal attempts to read law books, Rules of Court and Court Procedures have resulted in utter confusion and furthered my inability to comprehend what action I should take next to further prosecute this action.

4. I have had to obtain the assistance of other prisoners, who appeared to have some knowledge of law, under very difficult and restrictive conditions to assist me in writing and filing the papers currently on file before the court.

5. Plaintiff has tried to explain his situation before but was denied.

6. Plaintiff is in the Psychiatric program here at C.T.F. And unable to concentrate under pressure.

7. Plaintiff humbly ask this Court to please consider his pleadings.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on (date) 7-24-08, at (place) Soledad, California.

Matthew L. Johnson  
(Signature)

Plaintiff In Pro-Se

**PROOF OF SERVICE BY MAIL**  
**BY PERSON IN STATE CUSTODY**  
(C.C.P. §§ 1013(A), 2015,5)

I, MATTHEW L. JOHNSON, declare:

I am over 18 years of age and I am party to this action. I am a resident of CORRECTIONAL TRAINING FACILITY prison, in the County of Monterrey, State of California. My prison address is:

C.T.F. Central, CDCR #: D-33369  
CORRECTIONAL TRAINING FACILITY  
P.O. BOX 689, CELL #: DW-315UP  
SOLEDAD, CA 93960-0689.

On 7-24-08, I served the attached:

NOTICE OF OPPOSITION TO DEFENDANT'S MOTION TO  
DISMISS PLAINTIFF'S COMPLAINT AND AN REQUEST FOR  
COUNSEL.

on the parties herein by placing true and correct copies thereof, enclosed in a sealed envelope (verified by prison staff), with postage thereon fully paid, in the United States Mail in a deposit box so provided at the above-named institution in which I am presently confined. The envelope was addressed as follows:

TO: CLERK OF U.S. DISTRICT COURT  
ROOM 4290  
880 Front Street  
San Diego, Calif. 92101-8900

PHILLIP LINDSAY  
Deputy Attorney General  
110 W. A Street, Suite #1100  
San Diego, Ca. 92101  
P.O. Box 85266  
San Diego, Ca. 92186-5266  
Attorney For Defendant  
Capt. R. DARR

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 7-24-08.

MATTHEW L. JOHNSON  
Matthew L. Johnson  
Declarant